

FORM 132.M
(Approving/Authorizing)

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- () Funds have been encumbered out of funds previously appropriated for such purpose.
- () Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- () No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- () The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- (✓) Other - Grant Funds Available

Date: July 3, 2006

Madeline G. Appel
City Controller of the City of Houston, Texas

FUND REF: _____ AMOUNT: \$89,000.00 ENCUMB. NO.: PE 25GCTF

1-13 DE City of Houston, Texas Ordinance No. 2006-764

AN ORDINANCE APPROVING AND AUTHORIZING A PROFESSIONAL SERVICES CONTRACT BETWEEN THE CITY OF HOUSTON AND SMITH & COMPANY ARCHITECTS FOR THE AFRICAN AMERICAN LIBRARY (GFS NO. E-0144-03); CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

FORM 132.M
(Approving/Authorizing)

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.


Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 5th day of July, 2006.

APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUL 11 2006.


City Secretary

(Prepared by Legal Dept. )

(YNM/dw June 30, 2006)

Assistant City Attorney

(Requested by Issa Z. Dadoush, P.E., Director, Building Services Department)

(L.D. File No. 059-0600003-001)

FUND REF: **\$89,000.00**- EDI – B03MC – 48-0018

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AYE	NO	
✓		MAYOR WHITE
• • • •	• • • •	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		EDWARDS
		WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		BROWN
✓		LOVELL
✓		SEKULA-GIBBS
✓		GREEN
✓		BERRY
CAPTION	ADOPTED	

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

PROFESSIONAL SERVICES CONTRACT

FOR

PREDESIGN SERVICES

THIS PROFESSIONAL SERVICES CONTRACT FOR PREDESIGN SERVICES

("Contract") is made on the Countersignature Date by and between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and home-rule city of the State of Texas principally situated in Harris County, acting by and through its governing body, the City Council and **SMITH & COMPANY ARCHITECTS** ("Consultant"), a corporation authorized to do business in Texas.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

City

Director
Building Services Department
City of Houston
P. O. Box 1562
Houston, Texas 77251

Consultant

Terry D. Smith, AIA, President
Smith & Company Architects
5312 Almeda Road
Houston, Texas 77004

The City and the Consultant hereby agree to the terms and conditions of this Contract. This Contract consists of the following sections:

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EXHIBITS

- A. Scope of Services**
- B. Hourly Rates**
- C. Equal Employment Opportunity**
- D. Drug Policy Compliance Agreement**
- E. Certification of No Safety Impact Positions**
- F. Drug Policy Compliance Declaration**

All of the above described sections and documents are hereby incorporated into this Contract by this reference for all purposes.

In the event of any conflict or inconsistency between or among the provisions of such sections or documents, it is agreed that the provisions of this Contract shall control over the provisions of the Exhibits.

SIGNATURE PAGE

The Parties have made and executed this Contract in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):

SMITH & COMPANY ARCHITECTS

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Director, Building Services Department

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Assistant City Attorney
L.D. File No. 059-0600003-001

I. DEFINITIONS

As used in this Contract, the following terms shall have meanings set out below:

"City" is defined in the preamble of this Contract and includes its successors and assigns.

"Contract" means the agreement between Consultant and the City.

"Consultant" is defined in the preamble of this Contract, including its successors and assigns.

"Consultant Subcontract Cost" is the ordinary and reasonable cost of Consultant subcontracts made by Consultant and approved by the Director for the principal purpose of obtaining the professional services of others in connection with the performance of any service under this Contract.

"Consultant Markup" is the markup factor to be added to the Consultant Subcontract Cost or contract personnel cost is 8%

"Director" means the Director of the Building Services Department, or such person as he or she shall designate to administer this Contract.

"Documents" are the reports, charts, analyses, maps, letters, tabulations, exhibits, notes, models, photographs, and other work products obtained by or prepared by Consultant as part of its services under this Contract. The Director shall specify the medium and format in which Consultant shall provide such documents.

"Hourly Rate" means the hourly rate that an employee of Consultant for each hour during which such employee is actively performing services of benefit to the City and directly related to services under this Contract. The hourly rates by employee category for the duration of the Contract are shown on Exhibit "B" attached hereto and, by reference, incorporated.

"Reimbursable Expenses" are limited to the following: (1) The ordinary and reasonable cost of copying, printing, postage, delivery services, long distance telephone calls and any additional

expenses incurred by the Consultant in the course of his performance of Services under this Contract and approved by the Director, including any sales tax Consultant is legally required to pay for Reimbursable Expenses; and (2) the ordinary and reasonable costs of travel including meals and lodging to and from points outside of Houston by representatives of the Consultant, not-to-exceed the amounts established under the City's then current travel reimbursement policy for its employees, if such travel is reasonably necessary to accomplish a task and authorized by the Director.

II. DUTIES OF CONSULTANT

A. Scope of Services

Consultant shall provide the City professional pre-design services for the African-American Library at the Gregory School as described in Exhibit "A" ("Scope of Services") of this Contract.

B. Coordinate Performance

The Consultant shall coordinate all of its performance with the Director and such other person(s) as the Director may specify. The Consultant shall keep said person(s) currently advised at a minimum on a weekly basis of developments relating to the performance of this Contract, and the Consultant shall at all appropriate times advise and consult with the Director.

C. Time of Performance

The Director shall provide Consultant a written notice to proceed specifying a date to begin performance ("Start Date").

Consultant shall begin its performance of Basic Services no later than the Start Date. Consultant shall complete its performance of Basic Services within **42** days from the Start Date,

unless the Director extends the time for completion in writing. Consultant acknowledges that time is of the essence.

D. Payment of Subcontractors

Consultant shall make timely payments to all persons and entities supplying labor, materials or equipment for the execution of this Contract. Consultant agrees to protect, defend, and indemnify the City from any claims or liability arising out of its failure to make such payments.

E. Insurance

Consultant shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Contract. All policies except Professional Liability and Worker's Compensation must name the City as an additional insured. All liability policies must be issued by a Company with a Certificate of Authority from the State Department of Insurance to conduct insurance business in Texas or a rating of at least B+ and a financial size of Class VI or better according to the current year's Best's Key Rating Guide, Property-Casualty United States. Consultant shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
 - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Worker's Compensation including Broad Form All States endorsement:
 - Statutory amount
- (3) Professional Liability
 - \$1,000,000 per occurrence; \$1,000,000 aggregate
- (4) Automobile Liability insurance

- \$1,000,000 combined single limit per occurrence

Defense costs are excluded from the face amount of the policy.

Aggregate Limits are per 12-month policy period
unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled, or nonrenewed. Within the 30 day period, Consultant shall provide other suitable policies in lieu of those about to be canceled, or nonrenewed so as to maintain in effect the required coverage. If Consultant does not comply with this requirement, the Director, at his or her sole discretion, may

- (1) immediately suspend Consultant from any further performance under this Contract and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Consultant under this Contract.

F. Warranties

All the Consultant's performance shall conform to the professional standards of architects prevailing in Texas with respect to the scope, quality, due diligence and care of the services and products of the type to be provided by the Consultant under this Contract.

G. Use of Work Products

Consultant conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, and all Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Consultant, its

agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Contract (collectively "Works").

The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Consultant shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights. Consultant shall execute all documents required by the Director to further evidence this assignment and ownership. Consultant shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Contract. If Consultant's assistance is requested and rendered under this Section, the City shall reimburse Consultant for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Contract, or if requested by the Director, Consultant shall deliver all Works to the City. Consultant shall obtain written agreements from the Authors which bind them to the terms in this Section.

All Works developed, written, or produced under this Contract for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."

Consultant may retain copies of the Works for its archives. Consultant shall not otherwise use, sell, license, or market the Works.

H. Confidentiality

The Consultant recognizes that all materials to be prepared hereunder and all City data received by the Consultant shall be kept in strictest confidence. The Consultant shall not divulge

such information except as approved in writing by the Director or as otherwise required by law.

Licenses and Permits

The Consultant shall obtain and pay for all licenses, permits and certificates required by any statute, ordinance, rule, or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder.

J. Compliance with Laws

Consultant shall comply with all applicable state and federal laws and regulations and all provisions of the City of Houston Charter and Code of Ordinances.

K. Compliance with Equal Opportunity Ordinance

Consultant shall comply with all provisions of the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C".

L. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Consultants while on City Premises is prohibited. Consultant shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Consultants, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Contract and is on file in the City Secretary's Office.

(2) Before the City signs this Contract, Consultant shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

(a) a copy of its drug-free workplace policy,

- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "E."

If Consultant files a written designation of safety impact positions with its Drug Policy Compliance Contract, it also shall file every 6 months during the performance of this Contract or on completion of this Contract if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F." Consultant shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Contract. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Consultant begins work under this Contract.

(3) Consultant also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Consultant's employee work force.

(4) Consultant shall require that its subcontractors comply with the Executive Order, and Consultant shall secure and maintain the required documents for City inspection.

III. DUTIES OF CITY

A. Compensation

(1) For Basic Services performed under this Contract by Consultant, the City shall pay the lump sum amount of **\$67,000.00**. This lump sum amount shall include total compensation for Consultant for all Basic Services provided by the Consultant under this Contract, including all sub-consultant costs. Consultant guarantees that it shall perform all Basic Services for the lump sum amount set out above.

(2) For Additional Services performed under this Contract by Consultant, the City shall pay Consultant:

- (a) Hourly Rate times the hours worked for each employee classification listed on Exhibit B plus Reimbursable Expenses for Additional Services that are performed directly by the Consultant or its employees;
- (b) Consultant Subcontract Cost plus Consultant Markup for Additional Services that Consultant subcontracts;
- (c) Contract personnel cost and cost of personnel employed through employment agencies, plus Consultant Markup.

However compensation for Additional Services shall never exceed \$20,000.00 without prior written consent of the Director.

(3) For Reimbursable Expenses incurred under this Contract by Consultant, the City shall pay the actual expenditures made by the Consultant and the Consultant's employees and subcontractors, including any sales tax Consultant is legally required to pay in the interest of the Project while performing services requested by the Director. However compensation for such Reimbursable Expense shall never exceed **\$2,000.00** without prior written approval from the Director.

B. Method of Payment

The City shall pay on the basis of percentage of completion as itemized on monthly invoices submitted by Consultant and approved by the Director, showing the services performed and the fee. Invoices from Consultant shall show the percentage of completion for Basic Services or show the hours worked in the preceding month and the corresponding hourly rates for Additional Services. The City shall pay Consultant within 30 days of the receipt and approval of the invoices. The City shall make payments to the Consultant at the address for notices.

C. Limit of Appropriation - Allocated Funds; Limitation of City's Duties

(1) The City's duty to pay money to Consultant for any purpose under this Contract is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated from grant funds the sum of **\$89,000.00** to pay money due under this Contract (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Contract, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies.

(3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Consultant and approved by motion or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Consultant]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Contract]" between the City and (name of Consultant) countersigned by the City Controller on (Date of Countersignature) (the "Contract").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, has been allocated for the purposes of the Contract out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:

(Signature of the City Controller)
City Controller of the City

REQUESTED:

(Signature of the Director)
Director

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Contract in excess of the Allocated Funds. Consultant must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Consultant's only remedy is suspension or termination of its performance under this Contract and it has no other remedy in law or in equity against the City and no right to damages of any kind.

D. Suspension of Performance

(1) From time to time, Consultant may compute the amount of the Allocated Funds that has not been spent (the "Unspent Funds") according to the following formula:

$$A - (B + C) = \text{Unspent Funds as of that time.}$$

In this formula:

"A" = the level of Allocated Funds as of that time.

"B" = the aggregate of all Contract Charges actually paid by the City under this Contract before such time.

"C" = the aggregate of all Contract Charges accrued before such time under this Contract but which have not been actually paid.

(2) Upon Consultant's written request, the City shall provide the information necessary to compute the Unspent Funds according to the City's records.

(3) If the level of the Unspent Funds is less than \$5,000.00, then Consultant may suspend its performance under this Contract by notifying the City at least 30 days before the effective date of the suspension. Consultant must specify the date on which it will suspend services. After giving notice, Consultant may, in its sole discretion, extend the effective date by notifying the City.

(4) Before the effective date of Consultant's suspension, the City may make a supplemental allocation in an amount sufficient to raise the level of the Unspent Funds to at least \$5,000.00 (computed as of the date the Supplemental Allocation is issued). When the City gives notice of a sufficient Supplemental Allocation, Consultant's notice of suspension loses its effectiveness and is treated as if it were never given.

(5) If before the specified effective date of the suspension, the City fails to make a supplemental allocation, then Consultant may suspend its performance under this Contract as of the effective date. The City shall then pay Consultant the lesser of the following: (i) the Contract Charges accrued prior to the suspension date, less any allowable credits and offsets, or (ii) the Unspent Funds as of the date of suspension.

(6) Suspension and payment, as specified in this Section, are Consultant's exclusive remedies if the City does not make the supplemental allocations necessary to prevent suspension of Consultant's performance. The City's failure to allocate funds is not a default or breach of this Contract, and Consultant waives any claim (other than its claim for payment as specified in this Section) it may have at that time or in the future for financial losses or other damages resulting from this failure.

E. Access to Data

In addition to its other duties under this Contract, the City shall, to the extent permitted by law, provide access to all data and drawings in the possession of the City and allow the Consultant to make copies of documents in the possession or control of the City, or available to the City, which are requested by the Consultant and are reasonably necessary for the Consultant to perform under this Contract.

City does not, however, represent that all existing conditions are fully documented, nor does the City obligate itself to develop new documentation for the use of the Consultant.

IV. TERM AND TERMINATION

A. Contract Term

This Contract is effective on the Countersignature Date and remains in effect for one (1) year, unless sooner terminated under this Contract.

B. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal to Consultant at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then,

upon expiration of the initial term, this Contract is renewed for one (1) successive one-year term upon the same terms and conditions.

C. Termination for Convenience by the City

The Director at his or her sole discretion may terminate Consultant's performance under this Contract at any time by giving 30 days notice in writing to Consultant. Upon receipt of such notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services in connection with this Contract and shall proceed to cancel promptly all existing orders and subcontracts insofar as such orders or subcontracts are chargeable to this Contract. As soon as practicable after receipt of notice of termination, Consultant shall submit an invoice showing in detail the services performed under this Contract to the date of termination. The City shall then pay the prescribed fees to Consultant for services actually performed under this Contract to the date of termination, but not already paid for, in the same manner as prescribed in Section III provided such fees do not exceed the allocated funds remaining under this Contract.

Termination of Performance and receipt of payment for services rendered as set out above shall be Consultant's only remedies in the event of termination for convenience by the City. Such termination by the City shall not constitute a default or breach of this Contract, and Consultant waives any claim (other than its claim for payment as specified in this section), it may have or in the future for financial losses or other damages which may be occasioned by the City's termination for convenience.

D. Termination by Either Party

Either party may terminate its performance under this Contract in the event of default by the other party and a failure by that party to cure such default after receiving notice thereof, all as

provided in this Section. Default shall occur if a party fails to observe or perform any of its duties under this Contract. Should such a default occur, the injured party may deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such date may not be sooner than the 30th day following receipt of the notice. The injured party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the defaulting party cures such default, then the proposed termination shall be ineffective. If the defaulting party fails to cure such default prior to the proposed date of termination, then the injured party may terminate its performance under this Contract as of such date.

V. MISCELLANEOUS

A. Independent Contractor

The Consultant agrees to perform services under this Contract as an independent contractor not as a agent or employee of the City.

B. Force Majeure

1. Timely performance by both parties is essential to this Contract. However, neither party is liable for delays or other failures to perform its obligations under this Contract to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

2. This relief is not applicable unless the affected party does the following:

(a) uses due diligence to remove the Force Majeure as quickly as possible;

- (b) provides the other party with prompt written notice of the cause and its anticipated effect; and
- (c) provides the other party with written notice describing the actual delay or non-performance incurred within 7 days after the Force Majeure ceases.

3. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Contract by the City.

4. Consultant is not relieved from performing its obligations under this Contract due to a strike or work slowdown of its employees. Consultant shall employ only fully trained and qualified personnel during a strike.

C. Entire Agreement

This Contract merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are not other agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to the Project, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

D. Applicable Laws

This Contract is subject to all laws of the State of Texas, the City Charter and Ordinances of the City of Houston, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body or officer having jurisdiction, including the City's Charter and Code of Ordinances.

Venue for any litigation relating to this Contract shall be Harris County, Texas.

E. Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed in the preamble of this Contract or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

F. Acceptance and Approval

An approval by the Director, or by any other instrumentality of the City, of any part of Consultant's performance shall not be construed to waive compliance with this Contract or to establish a standard of performance other than required by this Contract or by law. The Director is not authorized to vary the terms of this Contract.

G. Inspections and Audits

The Director shall have the right to perform, or cause to be performed, (1) audits of the books and records of the Consultant, and (2) inspections of all places where work is undertaken in connection with this Contract. The Consultant shall be required to keep such books and records available for such purpose for at least three (3) years after the ceasing of its performance under this Contract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

H. Publicity

Consultant shall make no announcement or release of information concerning this Contract until such release has been submitted to and approved in writing by the City.

I. Assignment

The Consultant shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the prior written consent of the Director, except as provided in Section 9.406 of the Texas Business and Commerce Code ("Code").

The Consultant shall not delegate any portion of its performance under this Contract without the written consent of the Director.

Failure of Consultant to obtain the Director's written consent to the assignment of this Contract shall be an event of default, and Director, at his or her sole discretion, may immediately terminate this Contract. In the case of an assignment under the above Sections of the Code, Consultant shall immediately furnish the City with reasonable proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

J. CONSULTANT DEBT

IF CONSULTANT, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONSULTANT HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONSULTANT IN WRITING. IF CONSULTANT DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONSULTANT UNDER THIS AGREEMENT, AND CONSULTANT WAIVES ANY RECOURSE THEREFOR.

EXHIBIT "A"

SCOPE OF SERVICES

PROJECT DESCRIPTION

The City of Houston desires to convert the old Gregory Elementary School, located in the Fourth Ward, into a research library dedicated to the collection, preservation and dissemination of historical documentation and cultural information about the African American experience in Freedman's Town and the Greater Houston area. Built in 1926, the two-story 22,000 S.F. concrete and wood frame structure has been listed as a State Archeological Landmark by the Texas Historical Commission. Currently, the building is inhabitable due to existing environmental, structural, and cosmetic related issues, all of which can be considered severe. Any modification to this structure will be required to be permitted by the Texas Historical Commission prior to any construction being performed. Adjacent to the 1926 building, is an existing two-story building, built in 1962, that has been considered structurally incapable of being occupied. Plans are to demolish this building.

The City of Houston has invested years into the development of this project and has compiled volumes of information through various consultants. Due to the ongoing nature of the project and the involvement of new stakeholders, there is a need to determine the project's current values, goals, and requirements. Consultant shall a document that clearly outlines and communicates the projects architectural mission, space requirements and constraints, financial feasibility, and scheduling options.

SCOPE OF WORK

A. Basic Services

The Consultant will provide pre-design services as follows:

1. Owner – Supplied Data Coordination
 - a. Obtain and organize previously completed reports and correspondence for the project.
 - b. Review, separate and prioritize this information based on current relevance.
 - c. Disseminate this information to project subconsultants based on the subconsultants' responsibilities.

2. Facilities Assessment

- a. Review previously completed assessment reports for applicability to current requirements.
- b. Perform visual walk thru of the existing facility to perform a current and up-to-date structural conditions assessment in regards to its future use as a library building.
- c. Gather information related to the proposed site and its respective opportunities and constraints utilizing reports previously completed.

3. Program Review and Evaluation

- a. Identify the projects values, develop specific project goals and constraints and/or opportunities.
- b. Gather information related to similar facilities that may have been constructed or are being planned.
- c. Identify major space needs and establish the size and relationships of these spaces. A detailed list of spaces and their sizes will be included.
- d. Establish and document furniture and equipment requirements as it relates to the interior space requirements. This includes exhibits.
- e. Facilitate meetings with community stakeholders and designated committee members to define archival content for inclusion in the facility.
- f. Establish design guidelines in regards to the requirements required of the Texas Historical Commission
- g. Establish a conceptual project budget and schedule.

B. DELIVERABLES

- 1. Program document, including: spaces with their sizes and functions; desired adjacencies and pedestrian traffic flow; delineation of current project versus future phases; confirmation of structural conditions; summary narrative of community input to date.
- 2. Scope of services, budget, and schedule for architectural/engineering services through construction.

C. Additional Services –

1. Additional Services includes any service that is not already included in Basic Services and is related to the general scope of the Contract. Consultant shall perform additional services upon issuance of a notice to proceed by the Director describing:

- a. the scope of service of the additional service;
- b. the maximum cost for such service; and
- c. the hourly rates that are applicable from Exhibit B of this Contract to complete the additional services.

EXHIBIT "B"

HOURLY RATES

Pursuant to the Definitions of this Contract, the following table represents the classifications and hourly rates of employees of the Consultant anticipates will be directly engaged under this Contract.

<u>Classification</u>	<u>Hourly Rates</u>
Architecture	
Principal	\$125.00
Architect 1	\$ 85.00
Architect 2	\$ 70.00
Senior Programmer	\$100.00
Programmer	\$ 65.00
Construction Administrator	\$ 80.00
Interiors	
Principal	\$125.00
Designer	\$ 60.00
Senior Programmer	\$ 85.00
Programmer	\$ 50.00
Planning	
Principal	\$125.00
Project Planner	\$ 65.00
Senior Project Designer	\$ 95.00

EXHIBIT "C"

EQUAL EMPLOYMENT OPPORTUNITY

1. The Consultant, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The Consultant, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Consultant, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The Consultant, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The Consultant, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the Consultant's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Consultant, subcontractors, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Consultant Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The Consultant, subcontractors, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times are directed shall contain information as to the employment practice policies, program, and work force statistics of the Consultant, subcontractors, vendor, supplier, or lessee.

6. In the event of the Consultant's, subcontractors's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the Consultant, subcontractors, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The Consultant shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractors or vendor. The Consultant will take such action with respect to any subcontractors or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Consultant becomes involved in, or is threatened with litigation with a subcontractors or vendor as a result of such direction by the contracting agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

8. The Consultant shall file and shall cause of his subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the Consultant and each subcontractors.

DRUG POLICY COMPLIANCE AGREEMENT

have authority to bind Consultant with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Consultant is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

- I affirm on behalf of the Consultant that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Title

EXHIBIT "E"

**CONSULTANT'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____, _____,
(Name) (Title)

as an owner or officer of _____ (Consultant)
(Name of Company)

have authority to bind the Consultant with respect to its bid, and hereby certify that Consultant has no employee safety impact positions, as defined in §5.17 of Executive Order No. 1-31, that will be involved

in performing _____.
(Project)

Consultant agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "F"

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Consultant)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 19____.

Initials A written Drug Free Workplace Policy has been implemented and employees notified.
The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection
and Deterrence (Mayor's Policy).

Initials Written drug testing procedures have been implemented in conformity with the Mayor's
Drug Detection and Deterrence Procedures for Consultants, Executive Order No. 1-31.
Employees have been notified of such procedures.

Initials Collection/testing has been conducted in compliance with federal Health and Human
Services (HHS) guidelines.

Initials Appropriate safety impact positions have been designated for employee positions
performing on the City of Houston contract. The number of employees in safety impact
positions during this reporting period is _____.

Initials From _____ to _____ the following test has occurred
(Start date) (End date)

<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
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Number Employees Tested

Number Employees Positive

Percent Employees Positive

Initials Any employee who tested positive was immediately removed from the City worksite
consistent with the Mayor's Policy and Executive Order No. 1-31.

Initials I affirm that falsification or failure to submit this declaration timely in accordance with
established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this
declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)